

WRIGHT, FINLAY & ZAK, LLP
 Robin Prema Wright, Esq., SBN 150984
 Kathy Shakibi, Esq., SBN 237182
 4665 MacArthur Court, Suite 280
 Newport Beach, CA 92660 (*Barbera/Pleading/Reply to Non Opp*)
 Tel: (949) 477-5050; Fax: (949) 477-9200
rwright@wrightlegal.net; kshakibi@wrightlegal.net

Attorneys for Defendants
 SELECT PORTFOLIO SERVICING, INC., fka
 FAIRBANKS CAPITAL CORPORATION, erroneously sued herein as
 SELECT PORTFOLIO SERVICING CORP., and FAIRBANKS HOLDING
 CORP.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

PATRICIA C. BARBERA, Plaintiff, v. WMC MORTGAGE CORPORATION a California Corporation; aka WMC DIRECT, a California Business Entity, GE CONSUMER FINANCE, a unit of General Electric Company; SELECT PORTFOLIO SERVICING CORP., a Utah Corporation, FAIRBANKS HOLDING CORPORATION, Delaware Corporation; and LAND TITLE COMPANY OF MARIN, a California Business Entity; and DOES 1 through 100, inclusive. Defendants.) Case No.: 4:08-CV-02677-SBA)) Earlier Related Case: 4:04-cv-03738-) SBA)) [<i>Assigned to Hon. Sandra Brown</i>) <i>Armstrong</i>]) SELECT PORTFOLIO) SERVICING, INC., FORMERLY) KNOWN AS FAIRBANKS) CAPITAL CORP., <i>ERRONEOUSLY</i>) <i>SUED HEREIN AS SELECT</i>) PORTFOLIO SERVICING CORP.) and FAIRBANKS HOLDING) CORP.'S REPLY TO) NON-OPPOSITION)) Date: July 29, 2008) Time: 1:00 p.m.) Dept.: 3, Third Floor
--	---

1 Defendant Select Portfolio Servicing, Inc., ("SPS") fka Fairbanks Capital
 2 Corporation, *erroneously sued herein as two separate entities* Select Portfolio
 3 Servicing Corp., and Fairbanks Holding Corp., hereby submits this Reply to Non-
 4 Opposition to its Motion to Dismiss the Complaint for Failure to State a Claim
 5 ("Reply").

6 On June 17, 2008, SPS filed its Motion to Dismiss the Complaint for Failure
 7 to State a Claim, with a hearing date of July 22, 2008, which hearing date was later
 8 continued to July 29, 2008, the same time as co-defendants' scheduled motions for
 9 dismiss. Per Local Rule 7.3, Plaintiff Patricia Barbera's ("Barbera") opposition
 10 papers should have been filed and served not less than 21 days before the hearing
 11 date, which date was July 8, 2008.

12 As of the date of this Reply, Barbera has failed to file or serve any
 13 opposition. The failure to file opposition papers may be treated as a consent to
 14 granting the motion.¹ SPS hereby respectfully requests that the Court grant its
 15 motion and dismiss the complaint with prejudice.

16 Respectfully submitted,

17 WRIGHT, FINLAY & ZAK, LLP
 18

19 Dated: July 14, 2008

By: /Kathy Shakibi/

20 Robin Prema Wright, Esq.,
 21 Kathy Shakibi, Esq.,
 22 Attorneys for Defendants,
 23 SELECT PORTFOLIO SERVICING,
 24 INC., fka FAIRBANKS CAPITAL
 25 CORP. erroneously sued herein as
 26 two separate entities SELECT
 27 PORTFOLIO SERVICING CORP.
 28 and FAIRBANKS HOLDING CORP.

¹ See *Ghazali v. Moran* (9th Cir. 1995) 46 F3d 52, 53-54; see also *Fox v. American Airlines, Inc.* (DC Cir. 2004) 389 F3d 1291, 1295.

PROOF OF SERVICE

I, Gretchen Grant, declare as follows:

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 4665 MacArthur Court, Suite 280, Newport Beach, California 92660. I am readily familiar with the practices of Wright, Finlay & Zak, LLP, for collection and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited with the United States Postal Service the same day in the ordinary course of business.

On July 14, 2008, I served the within **SELECT PORTFOLIO SERVICING, INC.'S fka FAIRBANKS CAPITAL CORP. AND FAIRBANKS HOLDING CORP'S REPLY TO NON-OPPOSITION** on all interested parties in this action as follows:

☒ by placing true copies thereof enclosed in sealed envelopes addressed as follows:

See attached service list

☐ (BY MAIL SERVICE) I placed such envelope(s) for collection to be mailed on this date following ordinary business practices via U.S. Mail.

☐ (BY FACSIMILE) The facsimile machine I used, with telephone no. (949) 477-9200, complied with California Rules of Court, Rule 2003, and no error was reported by the machine.

☐ (BY PERSONAL SERVICE) I have caused our Service of Process, First Legal to serve such envelope on all interested parties in this action.

☒ (BY FEDERAL EXPRESS - NEXT DAY DELIVERY) I placed true and correct copies of thereof enclosed in a package designated by Federal Express with the delivery fees provided for.

☒ (Federal) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 15, 2008, at Newport Beach, California.

/Gretchen Grant/

1 SERVICE LIST:

2 Patricia C. Barbera
3 24 Caribe Isle
4 Novato, CA 94949
4 415-382-9617; fax: 415-382-0756

5 **Plaintiff In Pro Per**

6 Scott Jacobs, Esq,
7 Christopher Rivas, Esq.
8 Reed Smith LLP
9 355 South Grand Avenue, Suite 2900
10 Los Angeles, CA 90071
10 (213) 457 8000; Fax: (213) 457 8080
11 **Attorney for WMC MORTGAGE, LLC, and**
11 **GE Consumer Finance, Inc.**

12
13 Glenn D. Kabanuck, Esq.
14 Daniel A. Gamer, Attorney at Law
14 55 Professional Center Parkway, Ste. H
15 San Rafael, CA 94903-2739
16 415-472-6655; Fax: 415-472-3940
16 **Attorneys for California Land Title of Marin**